

REFERENCE TITLE: juvenile corrections; temporary release

State of Arizona  
Senate  
Forty-eighth Legislature  
First Regular Session  
2007

# **SB 1041**

Introduced by  
Senator Gray C

AN ACT

AMENDING SECTIONS 8-341 AND 41-2804, ARIZONA REVISED STATUTES; RELATING TO  
JUVENILE CORRECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-341, Arizona Revised Statutes, is amended to  
3 read:

4 8-341. Disposition and commitment; definitions

5 A. After receiving and considering the evidence on the proper  
6 disposition of the case, the court may enter judgment as follows:

7 1. It may award a delinquent juvenile:

8 (a) To the care of the juvenile's parents, subject to THE supervision  
9 of a probation department.

10 (b) To a probation department, subject to any conditions the court may  
11 impose, including a period of incarceration in a juvenile detention center of  
12 not more than one year.

13 (c) To a reputable citizen of good moral character, subject to the  
14 supervision of a probation department.

15 (d) To a private agency or institution, subject to the supervision of  
16 a probation officer.

17 (e) To the department of juvenile corrections.

18 (f) To maternal or paternal relatives, subject to the supervision of a  
19 probation department.

20 (g) To an appropriate official of a foreign country of which the  
21 juvenile is a foreign national who is unaccompanied by a parent or guardian  
22 in this state to remain on unsupervised probation for at least one year on  
23 the condition that the juvenile cooperate with that official.

24 2. It may award an incorrigible child:

25 (a) To the care of the child's parents, subject to the supervision of  
26 a probation department.

27 (b) To the protective supervision of a probation department, subject  
28 to any conditions the court may impose.

29 (c) To a reputable citizen of good moral character, subject to the  
30 supervision of a probation department.

31 (d) To a public or private agency, subject to the supervision of a  
32 probation department.

33 (e) To maternal or paternal relatives, subject to the supervision of a  
34 probation department.

35 B. If a juvenile is placed on probation pursuant to this section, the  
36 period of probation may continue until the juvenile's eighteenth birthday,  
37 except that the term of probation shall not exceed one year if all of the  
38 following apply:

39 1. The juvenile is not charged with a subsequent offense.

40 2. The juvenile has not been found in violation of a condition of  
41 probation.

42 3. The court has not made a determination that it is in the best  
43 interests of the juvenile or the public to require continued supervision.  
44 The court shall state by minute entry or written order its reasons for  
45 finding that continued supervision is required.

1           4. The offense for which the juvenile is placed on probation does not  
2 involve the discharge, use or threatening exhibition of a deadly weapon or  
3 dangerous instrument or the intentional or knowing infliction of serious  
4 physical injury on another.

5           5. The offense for which the juvenile is placed on probation does not  
6 involve a violation of title 13, chapter 14 or 35.1.

7           6. Restitution ordered pursuant to section 8-344 has been made.

8           C. If a juvenile is adjudicated as a first time felony juvenile  
9 offender, the court shall provide the following written notice to the  
10 juvenile:

11                   You have been adjudicated a first time felony juvenile  
12 offender. You are now on notice that if you are adjudicated of  
13 another offense that would be a felony offense if committed by  
14 an adult and if you commit the other offense when you are  
15 fourteen years of age or older, you will be placed on juvenile  
16 intensive probation, which may include home arrest and  
17 electronic monitoring, or you may be placed on juvenile  
18 intensive probation and may be incarcerated for a period of time  
19 in a juvenile detention center, or you may be committed to the  
20 department of juvenile corrections or you may be prosecuted as  
21 an adult. If you are convicted as an adult of a felony offense  
22 and you commit any other offense, you will be prosecuted as an  
23 adult.

24           D. If a juvenile is fourteen years of age or older and is adjudicated  
25 as a repeat felony juvenile offender, the juvenile court shall place the  
26 juvenile on juvenile intensive probation, which may include home arrest and  
27 electronic monitoring, may place the juvenile on juvenile intensive  
28 probation, which may include incarceration for a period of time in a juvenile  
29 detention center, or may commit the juvenile to the department of juvenile  
30 corrections pursuant to subsection A, paragraph 1, subdivision (e) of this  
31 section for a significant period of time.

32           E. If the juvenile is adjudicated as a repeat felony juvenile  
33 offender, the court shall provide the following written notice to the  
34 juvenile:

35                   You have been adjudicated a repeat felony juvenile  
36 offender. You are now on notice that if you are arrested for  
37 another offense that would be a felony offense if committed by  
38 an adult and if you commit the other offense when you are  
39 fifteen years of age or older, you will be tried as an adult in  
40 the criminal division of the superior court. If you commit the  
41 other offense when you are fourteen years of age or older, you  
42 may be tried as an adult in the criminal division of the  
43 superior court. If you are convicted as an adult, you will be  
44 sentenced to a term of incarceration. If you are convicted as

1           an adult of a felony offense and you commit any other offense,  
2           you will be prosecuted as an adult.

3           F. The failure or inability of the court to provide the notices  
4 required under subsections C and E of this section does not preclude the use  
5 of the prior adjudications for any purpose otherwise permitted.

6           G. After considering the nature of the offense and the age, physical  
7 and mental condition and earning capacity of the juvenile, the court shall  
8 order the juvenile to pay a reasonable monetary assessment if the court  
9 determines that an assessment is in aid of rehabilitation. If the director  
10 of the department of juvenile corrections determines that enforcement of an  
11 order for monetary assessment as a term and condition of conditional liberty  
12 is not cost-effective, the director may require the youth to perform an  
13 equivalent amount of community restitution in lieu of the payment ordered as  
14 a condition of conditional liberty.

15           H. If a child is adjudicated incorrigible, the court may impose a  
16 monetary assessment on the child of not more than one hundred fifty dollars.

17           I. A juvenile who is charged with unlawful purchase, possession or  
18 consumption of spirituous liquor is subject to section 8-323. The monetary  
19 assessment for a conviction of unlawful purchase, possession or consumption  
20 of spirituous liquor by a juvenile shall not exceed five hundred dollars.  
21 The court of competent jurisdiction may order a monetary assessment or  
22 equivalent community restitution.

23           J. The court shall require the monetary assessment imposed under  
24 subsection G or H of this section on a juvenile who is not committed to the  
25 department of juvenile corrections to be satisfied in one or both of the  
26 following forms:

27           1. Monetary reimbursement by the juvenile in a lump sum or installment  
28 payments through the clerk of the superior court for appropriate  
29 distribution.

30           2. A program of work, not in conflict with regular schooling, to  
31 repair damage to the victim's property, to provide community restitution or  
32 to provide the juvenile with a job for wages. The court order for  
33 restitution or monetary assessment shall specify, according to the  
34 dispositional program, the amount of reimbursement and the portion of wages  
35 of either existing or provided work that is to be credited toward  
36 satisfaction of the restitution or assessment, or the nature of the work to  
37 be performed and the number of hours to be spent working. The number of  
38 hours to be spent working shall be set by the court based on the severity of  
39 the offense but shall not be less than sixteen hours.

40           K. If a juvenile is committed to the department of juvenile  
41 corrections the court shall specify the amount of the **MONETARY** assessment  
42 imposed pursuant to subsection G or H of this section.

43           L. After considering the length of stay guidelines developed pursuant  
44 to section 41-2816, subsection C, the court may set forth in the order of  
45 commitment the minimum period during which the juvenile shall remain in

1 secure care while in the custody of the department of juvenile corrections.  
2 When the court awards a juvenile to the department of juvenile corrections or  
3 an institution or agency, it shall transmit with the order of commitment  
4 copies of a diagnostic psychological evaluation and educational assessment if  
5 one has been administered, copies of the case report, all other psychological  
6 and medical reports, restitution orders, any request for postadjudication  
7 notice that has been submitted by a victim and any other documents or records  
8 pertaining to the case requested by the department of juvenile corrections or  
9 an institution or agency. The department shall not release a juvenile from  
10 secure care before the juvenile completes the length of stay determined by  
11 the court in the commitment order unless the county attorney in the county  
12 from which the juvenile was committed requests the committing court to reduce  
13 the length of stay. The department may **TEMPORARILY RELEASE THE JUVENILE FROM**  
14 **SECURE CARE PURSUANT TO SECTION 41-2804, MAY** release the juvenile from secure  
15 care without a further court order after the juvenile completes the length of  
16 stay determined by the court or may retain the juvenile in secure care for  
17 any period subsequent to the completion of the length of stay in accordance  
18 with the law.

19 M. Written notice of the release of any juvenile pursuant to  
20 subsection L of this section shall be made to any victim requesting notice,  
21 the juvenile court that committed the juvenile and the county attorney of the  
22 county from which the juvenile was committed.

23 N. Notwithstanding any law to the contrary, if a person is under the  
24 supervision of the court as an adjudicated delinquent juvenile at the time  
25 the person reaches eighteen years of age, treatment services may be provided  
26 until the person reaches twenty-one years of age if the court, the person and  
27 the state agree to the provision of the treatment and a motion to transfer  
28 the person pursuant to section 8-327 has not been filed or has been  
29 withdrawn. The court may terminate the provision of treatment services after  
30 the person reaches eighteen years of age if the court determines that any of  
31 the following applies:

- 32 1. The person is not progressing toward treatment goals.
- 33 2. The person terminates treatment.
- 34 3. The person commits a new offense after reaching eighteen years of  
35 age.
- 36 4. Continued treatment is not required or is not in the best interests  
37 of the state or the person.

38 O. On the request of a victim of an act that may have involved  
39 significant exposure as defined in section 13-1415 or that if committed by an  
40 adult would be a sexual offense, the prosecuting attorney shall petition the  
41 adjudicating court to require that the juvenile be tested for the presence of  
42 the human immunodeficiency virus. If the victim is a minor the prosecuting  
43 attorney shall file this petition at the request of the victim's parent or  
44 guardian. If the act committed against a victim is an act that if committed  
45 by an adult would be a sexual offense or the court determines that sufficient

1 evidence exists to indicate that significant exposure occurred, it shall  
2 order the department of juvenile corrections or the department of health  
3 services to test the juvenile pursuant to section 13-1415. Notwithstanding  
4 any law to the contrary, the department of juvenile corrections and the  
5 department of health services shall release the test results only to the  
6 victim, the delinquent juvenile, the delinquent juvenile's parent or guardian  
7 and a minor victim's parent or guardian and shall counsel them regarding the  
8 meaning and health implications of the results.

9 P. If a juvenile has been adjudicated delinquent for an offense that  
10 if committed by an adult would be a felony, the court shall provide the  
11 department of public safety Arizona automated fingerprint identification  
12 system established in section 41-2411 with the juvenile's fingerprints,  
13 personal identification data and other pertinent information. If a juvenile  
14 has been committed to the department of juvenile corrections the department  
15 shall provide the fingerprints and information required by this subsection to  
16 the Arizona automated fingerprint identification system. If the juvenile's  
17 fingerprints and information have been previously submitted to the Arizona  
18 automated fingerprint identification system the information is not required  
19 to be resubmitted.

20 Q. Access to fingerprint records submitted pursuant to subsection P of  
21 this section shall be limited to the administration of criminal justice as  
22 defined in section 41-1750. Dissemination of fingerprint information shall  
23 be limited to the name of the juvenile, juvenile case number, date of  
24 adjudication and court of adjudication.

25 R. If a juvenile is adjudicated delinquent for an offense that if  
26 committed by an adult would be a misdemeanor, the court may prohibit the  
27 juvenile from carrying or possessing a firearm while the juvenile is under  
28 the jurisdiction of the department of juvenile corrections or the juvenile  
29 court.

30 S. For the purposes of this section:

31 1. "First time felony juvenile offender" means a juvenile who is  
32 adjudicated delinquent for an offense that would be a felony offense if  
33 committed by an adult.

34 2. "Repeat felony juvenile offender" means a juvenile to whom both of  
35 the following apply:

36 (a) Is adjudicated delinquent for an offense that would be a felony  
37 offense if committed by an adult.

38 (b) Previously has been adjudicated a first time felony juvenile  
39 offender.

40 3. "Sexual offense" means oral sexual contact, sexual contact or  
41 sexual intercourse as defined in section 13-1401.

1           Sec. 2. Section 41-2804, Arizona Revised Statutes, is amended to read:  
2           41-2804. Duties and powers of director

3           A. The director shall:

4           1. Be responsible for the overall operations and policies of the  
5 department.

6           2. Maintain and administer all secure care facilities and programs  
7 within the department required and established for the custody, control,  
8 treatment, education and rehabilitation of all ~~youth~~ YOUTHS committed to the  
9 department.

10          3. Be responsible for the administration and execution of all  
11 conditional liberty services for ~~youth~~ YOUTHS released pursuant to rules  
12 adopted by the director in accordance with law.

13          4. Be responsible for the development of policies and programs which  
14 shall be recommended to the governor and the legislature for the purpose of  
15 improving the youth rehabilitative and treatment programs of this state.

16          5. Develop and establish a uniform statewide method of reporting  
17 statistics as related to this chapter.

18          6. Employ deputy directors and other key personnel based on  
19 qualifications prescribed by the director which require education and  
20 practical experience.

21          B. The director may:

22          1. Adopt rules to implement the purposes of the department and the  
23 duties and powers of the director.

24          2. Take any administrative action to improve the efficiency of the  
25 department, including the following:

26           (a) Create new divisions or units or consolidate divisions or units.

27           (b) Transfer employees between the various divisions and units of the  
28 department.

29           (c) Shift duties between divisions or units.

30           (d) Delegate authority to appoint, hire, terminate and discipline all  
31 personnel of the department, including specialists and consultants.

32           (e) Transfer committed ~~youth~~ YOUTHS between secure care facilities.

33           (f) Transfer ~~youth~~ YOUTHS who have been committed to the department or  
34 to any facility under its jurisdiction between the various secure care  
35 facilities for youths, foster homes and public and private agencies on  
36 notification to the committing court.

37           (g) Appoint certain employees of the department to peace officer  
38 status for purposes of guarding, transporting or pursuing persons under the  
39 jurisdiction of the department and appoint certain employees of the  
40 department to peace officer status for purposes of investigating or arresting  
41 persons who commit or attempt to commit offenses directly relating to the  
42 operations of the department.

43          3. Contract with other agencies or institutions in furtherance of any  
44 department program.

1           4. AUTHORIZE THE TEMPORARY ESCORTED RELEASE OF A YOUTH FOR  
2 COMPASSIONATE LEAVE OR FOR THE PURPOSES OF TREATMENT, EDUCATION OR  
3 REHABILITATION. BEFORE APPROVING A TEMPORARY ESCORTED RELEASE, THE DIRECTOR  
4 SHALL CONSIDER THE PUBLIC SAFETY AND ANY OTHER RELEVANT FACTORS. DEPARTMENT  
5 STAFF SHALL ESCORT A YOUTH RELEASED PURSUANT TO THIS PARAGRAPH.

6           C. Peace officers of the department shall not preempt the authority  
7 and jurisdiction of established agencies of this state and political  
8 subdivisions of this state. Such officers shall notify agencies of this  
9 state and political subdivisions of this state before conducting an  
10 investigation within the jurisdiction of the agency and before making an  
11 arrest within the jurisdiction of the agency and shall ask, except in an  
12 emergency, if the agency wishes to participate, perform the investigation or  
13 arrest the person to be arrested before proceeding. Personnel appointed as  
14 peace officers by the director shall have the minimum qualifications  
15 established for peace officers pursuant to section 41-1822. Personnel  
16 appointed by the director pursuant to subsection B, paragraph 2, subdivision  
17 (g) of this section are not eligible to participate in funding provided by  
18 the peace officers' training fund established by section 41-1825 or in the  
19 public safety personnel retirement system except as otherwise provided in  
20 title 38, chapter 5, article 4.